

TXO PRODUCTION CORP.

IBLA 84-83      Decided May 29, 1985

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting two oil and gas lease offers. W 86319 Acq. and W 86320.

Set aside and remanded.

1.      Oil and Gas Leases: Lands Subject to -- Wildlife Refuges and Projects: Leases and Permits

Generally, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing, if issuance of a mineral lease would not be inconsistent with or interfere with the purpose for which the lands are withdrawn or reserved.

2.      Wildlife Refuges and Projects: Leases and Permits

Pursuant to sec. 137 of the 1984 Continuing Resolution, 97 Stat. 981, and Instruction Memorandum No. 84-171, lease offers filed prior to Nov. 14, 1983, for any land within a unit of the National Wildlife Refuge System, outside of Alaska, must be kept in suspense, until such time, if ever, that changes to the applicable regulations are promulgated and an environmental impact statement is prepared.

APPEARANCES: Joseph R. Binford, Esq., TXO Production Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

TXO Production Corporation has appealed from two decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated September 29, and October 4, 1983, respectively, which rejected, in their entirety, oil and gas lease offers W 86319 Acq. and W 86320, both filed on August 2, 1983, because the lands embraced within these offers were within the Seedskaadee National Wildlife Refuge and, therefore, not available for leasing under 43 CFR 3101.5-1.

On appeal, appellant does not deny that the lands sought by these offers are within the Seedskadee National Wildlife Refuge. Rather, it contends that the prohibition of leasing contained in 43 CFR 3101.5-1(b) does not apply because the lands within the refuge were not withdrawn for the protection of all species of wildlife as required under 43 CFR 3101.5-1(a), citing Esdras K. Hartley, 57 IBLA 319 (1981). Thus, appellant argues that the lands are available for leasing.

[1] This precise question was examined in an earlier appeal brought by appellant. In TXO Production Corp., 79 IBLA 81 (1984), we noted that, as a general proposition, unless the mineral leasing laws or a withdrawal or reservation order specifically provides otherwise, lands withdrawn or reserved for a specific purpose are available for leasing, if issuance of a mineral lease would not be inconsistent with or interfere with the purposes for which the land was withdrawn or reserved. We further noted that the two public land orders (PLO 4834 and 5440) which established the Seedskadee National Wildlife Refuge specifically provided that the lands were not withdrawn from the operation of the mineral leasing laws. Thus, nothing in these orders would prohibit issuance of the subject leases, though we were careful to point out that the Secretary always retained discretion to accept or reject lease offers even where the land was available for leasing.

The regulation at issue, 43 CFR 3101.5-1(b), represents a formal exercise of the Secretary's authority not to lease "wildlife refuge lands" as those lands are defined in 43 CFR 3101.5-1(a). But, as we noted in examining the predecessor regulation 43 CFR 3101.3-3(a)(1) (1981) in Esdras K. Hartley, supra, the definition of "wildlife refuge lands" for the purpose of the leasing prohibition embraced only those lands withdrawn "for the protection of all species of wildlife within a particular area." In TXO Production Corp., supra, we concluded that inasmuch as nothing in the withdrawal orders indicated the purpose of the Seedskadee National Wildlife Refuge, it was impossible to conclude that leasing was barred by the provisions of 43 CFR 3101.5-1. Id. at 84.

[2] However, events occurring subsequent to the filing of the instant offers militate against their present acceptance. On November 14, 1983, the President signed the 1984 Continuing Resolution, P.L. 98-151. Section 137, 97 Stat. 981, provided:

No funds in this or any other Act shall be used to process or grant oil and gas lease applications on any Federal lands outside of Alaska that are in units of the National Wildlife Refuge System, except where there are valid existing rights or except where it is determined that any of the lands are subject to drainage as defined in 43 CFR 3100.2, unless and until the Secretary of the Interior first promulgates, pursuant to section 553 of the Administrative Procedure Act, revisions to his existing regulations so as to explicitly authorize the leasing of such lands, holds a public hearing with respect to such revisions, and prepares an environmental impact statement with respect thereto.

Pursuant thereto, 1/ the Director, BLM, issued Instruction Memorandum No. 84-171, directing, inter alia, the suspension of all oil and gas lease offers embracing lands in units of the National Wildlife Refuge System which were pending on November 14, 1983, until revision of the regulations and preparation of an environmental impact statement (EIS). In view of these developments, the Board must set aside the decisions herein and remand the case files to the State Office with instructions to maintain the offers in a suspended status pending regulatory revision and issuance of an EIS. 2/ See D. M. Yates, 82 IBLA 389 (1984); Hingeline Overthrust Oil & Gas, Inc., 80 IBLA 4 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case files are remanded.

James L. Burski  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Will A. Irwin  
Administrative Judge.

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1/ While section 137 was passed as part of a continuing resolution to provide funding for fiscal 1984, it should be noted that the language of section 137 covered not only funds appropriated by that Act but funds appropriated by "any other Act."

2/ In this context, we would note that Change 1 to Instruction Memorandum No. 84-171, dated Mar. 22, 1984, declared that, pursuant to a policy determination by Secretary Clark, there are no plans for leasing in any wildlife refuges outside Alaska in the foreseeable future, and thus, no revisions of the regulations were contemplated, nor were any further expenditures for preparation of an EIS envisioned. In light of this, the desirability of maintaining pending offers in a suspended category, rather than rejecting them, is open to question, and appellant might wish to consider whether, at the present time, it might not be prudent to relinquish its offers.

